STATE OF MICHIGAN

COURT OF APPEALS

LINDA A. SWISTAK, Plaintiff-Appellee,	UNPUBLISHED September 9, 2014
v	No. 317178 Wayne Circuit Court
HOME-OWNERS INSURANCE COMPANY, Defendant-Appellant.	LC No. 12-000943-NF

Before: RIORDAN, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court order denying its motion for summary disposition in this underinsured motorist benefits action. We reverse and remand for proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

Plaintiff, Linda A. Swistak, was in a car accident on December 17, 2008. Another driver crossed the center line and struck plaintiff's vehicle, causing damage to her and her car. Plaintiff claimed that she was insured on a policy from defendant at the time of the accident, which included an underinsured motorist (UIM) endorsement.

Plaintiff initiated this instant action on January 20, 2012, asserting that she was entitled to benefits under the policy. The relevant policy language states:

> 2. COVERAGE
>
> a. We will pay compensatory damages any person is legally entitled to recover or from the owner or operator of an underinsured automobile for bodily injury sustained while occupying an automobile that is covered by SECTION II – LIABILITY COVERAGE of the policy.
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> * * *
>
> c. The bodily injury must be accidental and arise out of the ownership, maintenance or use of the underinsured automobile.

* * *

6. CONDITIONS

The following conditions apply in addition to those contained in SECTION VI – GENERAL CONDITIONS of the policy.

a. TIME LIMITATION FOR ACTIONS AGAINST US

Any person seeking Underinsured Motorist Coverage must:

(1) present a claim for compensatory damages according to the terms and conditions of the policy; and

(2) *conform with any applicable statute of limitations applying to bodily injury claims in the state in which the accident occurred.* [Emphasis added.]

Defendant moved for summary disposition under MCR 2.116(C)(10), asserting that plaintiff's claim for UIM benefits was untimely. Defendant argued that the three-year statute of limitations was applicable, and that plaintiff filed her complaint after that time period. Plaintiff, however, responded that a three-year term was not spelled out in the agreement, and that the word "any" permitted her to choose any statute of limitations set forth in MCL 600.5805. The trial court found the policy language ambiguous, so denied defendant's motion for summary disposition. Defendant now appeals.

II. STATUTE OF LIMITATIONS

A. STANDARD OF REVIEW

We review *de novo* a trial court's ruling on a motion for summary disposition. *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). "If the pleadings demonstrate that one party is entitled to judgment as a matter of law, or if affidavits and other documentary evidence show that there is no genuine issue of material fact concerning the running of the period of limitations, the trial court must render judgment without delay." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 720; 742 NW2d 399 (2007).

"Whether a period of limitations applies to preclude a party's pursuit of an action constitutes a question of law that we review de novo." *City of Detroit v 19675 Hasse*, 258 Mich App 438, 444; 671 NW2d 150 (2003). The construction and interpretation of an insurance contract, and whether the policy language is ambiguous, are also questions of law that we review *de novo*. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

B. ANALYSIS

"An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of

the parties." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). "The policy application, declarations page of policy, and the policy itself construed together constitute the contract." *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). An insurance contract is to be read as a whole, with meaning given to every term. *Id*. A clear and unambiguous contractual provision is to be enforced as written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). "Clear and unambiguous language may not be rewritten under the guise of interpretation," *South Macomb Disposal Auth v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997), and "[c]ourts must be careful not to read an ambiguity into a policy where none exists." *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996).

An ambiguity exists when two provisions irreconcilably conflict, or when a term is equally susceptible to more than one meaning. *Coates*, 276 Mich App at 503. "However, if a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998). Although we will "construe the contract in favor of the insured if an ambiguity is found, this does not mean that the plain meaning of a word or phrase should be perverted, or that a word or phrase, the meaning of which is specific and well recognized, should be given some alien construction merely for the purpose of benefiting an insured." *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 82; 730 NW2d 682 (2007). Moreover, "an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy." *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005).

The policy at issue in this case requires the insured to file suit within "any applicable statute of limitations applying to bodily injury claims" in Michigan. Limitations periods for claims of bodily injury in Michigan, set forth in MCL 600.5805, include several different situations. For example, there is a two-year statute of limitations for actions such as assault, battery, false imprisonment, malicious prosecution, or malpractice. MCL 600.5805(2), (5), and (6). There also is a three-year statute of limitations for actions that result in the death of or injury to a person and property, as well as products liability. MCL 600.5805(10) and (13). There also is a five-year statute of limitations for actions involving an assault and battery or death or injury to property when the accused is or was in a dating relationship or marriage with the victim. MCL 600.5805(3), (4), (11), and (12).

In this case, plaintiff concludes that the policy language of "any applicable statute of limitations applying to bodily injury claims in the state in which the accident occurred" allows her to choose any limitations period set forth in MCL 600.5805, regardless of the type of action giving rise to that claim. Naturally, she chooses the longest one available, five years, even though she was not assaulted or battered by someone she was in a dating relationship with or a former spouse. See MCL 600.5805(3), (4), (11), and (12). The trial court found plaintiff's interpretation reasonable, and that the policy was ambiguous. The trial court is in error.

The interpretation plaintiff advances is inconsistent with the plain language of the provision. The provision requires the insured to file suit within "*any applicable* statute of limitations applying to bodily injury claims" in Michigan. (Emphasis added). While plaintiff

focuses on the word "any," she ignores the word "applicable." This violates the axiom of contract interpretation that "courts must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). In order for a statute of limitations to be "applicable," it must be "relevant" or "suitable" or "appropriate." *Random House Webster's College Dictionary* (2005). "Any" is defined as "one, a, an, or some; one or more without specification or identification." *Random House Webster's College Dictionary* (2005).

Thus, "any applicable statute of limitations applying to bodily injury claims" in Michigan would be one that is relevant to plaintiff's claim for bodily injury resulting from her car accident. The five-year limitations period—for bodily injury resulting from a dispute with a current or former domestic partner—is not relevant to plaintiff's claim. Rather, the "applicable" or relevant limitations period for the injury in this case is the three-year period generally applicable to claims for injury to one's person. MCL 600.5805(10). While plaintiff contends that the policy could have specified a three-year term if the parties so intended, the same can be true of plaintiff's claim, namely, that a five-year term could have been specified if intended.[1]

Moreover, this interpretation is consistent with the prefatory language in section 6(a). See *Royal Prop Group, LLC*, 267 Mich App at 715 (an insurance contract must be read as a whole). The section begins with the mandate that: "Any person seeking Underinsured Motorist Coverage must" adhere to the statute of limitations language. UIM coverage, in turn, is defined as benefits payable to any person who sustains accidental bodily injury while occupying a vehicle covered under the policy. Therefore, "any applicable statute of limitations applying to bodily injury claims" would be any statute of limitations period applicable to a claim for accidental bodily injury sustained while occupying a vehicle insured under the policy. As stated *supra*, that would be the three-year period applicable to an action "to recover damages . . . for injury to a person or property[,]" MCL 600.5805(10), and not the five-year period to recover damages for the assault and battery inflicted by a current or former domestic partner. MCL 600.5805(3), (4), (11), and (12).[2]

[1] Even if the five-year statute of limitations could be "applicable" to a claim involving domestic battery in a car, that is not "applicable" to plaintiff's claim in this case.

[2] While plaintiff contends, in the alternative, that an ambiguity exists and must be construed in her favor, we "construe the contract in favor of the insured if an ambiguity is found, [but] this does not mean that the plain meaning of a word or phrase should be perverted, or that a word or phrase, the meaning of which is specific and well recognized, should be given some alien construction merely for the purpose of benefiting an insured." *Citizens Ins Co*, 477 Mich at 82.

III. CONCLUSION

The trial court erred in its interpretation of the plain language of the policy and in denying defendant's motion for summary disposition. We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra